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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DESIDERIO LOPEZ,

Plaintiff,

v.

UNITED PARCEL SERVICE GENERAL
SERVICE CORP., et al.,

Defendants.

2:04-cv-0732 JCM PAL

Date: N/A

Time: N/A

ORDER

Presently before the court is defendant's motion to dismiss for want of prosecution (Doc. # 132), filed on June 19, 2008. Plaintiff filed an opposition (Doc. # 135) on July 2, 2008. Defendant filed a reply (Doc. # 136) on July 14, 2008.

BACKGROUND

On February 4, 2008, the clerk of the court issued a notice of intent to dismiss the instant action for want of prosecution pursuant to Local Rule 41-1. (*See* Doc. # 127). The notice provided that if plaintiff did not take action in this case by March 5, 2008, the court would dismiss the action for want of prosecution. (*See id.*). On March 5, 2008, plaintiff filed a notice indicating that he was "ready, willing and able to prosecute this matter." (*See* Doc. # 128, at 1:19). In that notice, plaintiff informed the court that counsel was in the process of preparing a proposed pretrial order and would file it on or before March 14, 2008. (*See* Doc. # 1:22–24).

On March 21, 2008, defendant provided plaintiff with its revised version of the proposed

1 pretrial order. Initially, plaintiff informed defendant that he would respond by March 25, 2008 with
2 his proposed edits. At that time, defendant filed a status report stating that the parties believed they
3 would file the proposed pretrial order by March 26, 2008. (*See* Doc. # 130).

4 According to defendant, plaintiff never provided any response with regard to the proposed
5 pretrial order. On June 19, 2008, defendant filed a motion to dismiss plaintiff's complaint for want
6 of prosecution pursuant to Fed. R. Civ. P. 41(b) and Local Rule 41-1. (*See* Doc. # 132). As of that
7 date, plaintiff had failed to file a proposed pretrial order with the court. (*See id.*, at 2:11–15). On
8 June 30, 2008, plaintiff filed a proposed pretrial order. (*See* Doc. # 133). The court signed the
9 proposed order and set trial for Monday, September 22, 2008, at 9 a.m. (*See* Doc. # 134, at
10 24:5–10).

11 ANALYSIS

12 Plaintiff argues the instant motion is moot because the court signed the pretrial order on July
13 1, 2008, and the parties are scheduled to commence trial on September 22, 2008. (*See* Doc. # 135,
14 at 1:19–22). Defendant argues that dismissal is warranted because this case has been delayed for
15 over a year and a half and plaintiff has not provided the court with a reason justifying his failure to
16 prosecute this action. (*See* Doc. # 136, at 2:10–20).

17 Here, the court will not dismiss plaintiff's case for failure to prosecute. Plaintiff's counsel
18 has accepted responsibility for any delay and, at this juncture, the court will not sanction plaintiff for
19 counsel's lack of diligence. Nevertheless, the court cautions plaintiff's counsel that any further delay
20 in this case may result in dismissal of this action.

21 CONCLUSION


22 UPON CONSIDERATION of defendant's motion, the memorandum of points and
23 authorities, and the papers and pleadings on file in this matter,

24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion to
25 dismiss for want of prosecution (Doc. # 132) be, and the same hereby is, DENIED. Presently before
26 the court is plaintiff's motion to reopen the case (#75) and defendants' motion for attorney fees
27 (#76). However, by order (#74) of the court, the clerk's office has already reopened the case.

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to
2 reopen the case (#75) is DENIED as MOOT.

3 IT IS FURTHER ORDERED that defendants' motion for attorney fees (#76) is DENIED,
4 without prejudice, as it is untimely made.

5 DATED this 15th day of July, 2008.

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9 UNITED STATES DISTRICT JUDGE
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